IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

CRP.No. 477 of 2000(F)

(E.P. 434 OF 1985 IN OS.530/1982 of ADDL.SUB COURT,KOTTAYAM)

REVN. PETITIONER/JUDGMENT DEBTOR/DEFENDANT:

JACOB JOSEPH,
GOVT. CONTRACTOR,
KONDODICKAL HOUSE, ERAVUCHIRA,
VAKATHANAM VILLAGE, THOTTACKAD.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT/DECREE HOLDER/PLAINTIFF:

SUSAMMA GEORGE,
ENCHATHUPARAMBIL VEETTIL,
KANNANCHIRA BHAGOM,
VAKATHANAM VILLAGE, -DO- KARA.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
ADV. SRI.THOMAS GEORGE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO. 477 OF 2000

ORDER ON C.M.P. NO. 971 OF 2000 IN C.R.P.NO. 477 OF 2000

DISMISSED.

28.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 477 OF 2000

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Dated this the 28th November , 2007

O R D E R

The judgment debtor in O.S.No. 530 of 1982 on the file of the court of the I Addl. Sub Judge, Kottayam challenges the order dated 05.01.2000 in E.P.No. 434 of 1985 .

2. The suit was for realisation of money . The suit was decreed. Execution Petition was filed in 1985. The defendant had filed appeal. Stay was granted by the appellate court . Therefore, Execution Petition was kept pending. After disposal of the appeal, proceedings in Execution Petition continued. By the order impugned, the executing court directed sale of property belonging to the judgment debtor .

3. In the Execution Petition, the judgment debtor had filed objections. One of the objections was that T.A. Varkey, who has signed the Execution Petition and the draft sale proclamation has no right to do so. The decree holder is Susamma George. The Execution Petition was filed by Susamma George represented by Power of Attorney Holder , T.A. Varkey . It would appear that the objections raised by the judgment debtor is that T.A. Varkey is not the Power of Attorney Holder, as contended by him. The judgment debtor submits

that Power of Attorney was not produced before the executing court. While, the learned counsel for the decree holder submits that copy of the Power of Attorney was produced before the executing court and the original was produced in a suit filed by Susamma George against the judgment debtor/revision petitioner. The order does not deal with that contention and therefore, it is not clear whether the objection raised by the judgment debtor is correct or not. In these circumstances, I need only mention that the executing court will ensure that T.A. Varkey is the Power of Attorney Holder of Susamma George. If the original Power of Attorney or certified copy of the same was produced at the time of presenting the Execution Petition , no further verification need be made. If it was not produced, the court below shall proceed with the Execution Petition only after production of the Power of Attorney or certified copy of the Power of Attorney.

4. Another objection raised by the judgment debtor is that the decree holder has not shown in the draft sale proclamation the real value of the property sought to be sold. There are two items of property shown in the draft sale proclamation . The decree holder has shown the value of item No.1 at Rs. One lakh and the value of item No.2 at Rs. 20,000/-. The judgment debtor contended in the objections that item No.1 would fetch a value of Rs. 50 lakhs and item No.2 would fetch a value of Rs. 10 lakhs. The order passed by the court below does not deal with the objections raised by the judgment debtor.

There is no direction to show in the sale proclamation the value as suggested by the judgment debtor.

5. The learned counsel for the revision petitioner/judgment debtor also raised a contention that for realisation of the decree debt which comes below Rs. 1.5 lakhs , it is not necessary to sell the entire extent of land shown in the sale proclamation and it would be sufficient if a portion of one of the items is sold.

6. Rule 64 of Order XXI of the Code of Civil Procedure provides that the court shall pass an order that the attached property belonging to the judgment debtor or such portion thereof as is sufficient for satisfying the decree shall be sold . Rule 66 of Order XXI of the Code of Civil Procedure provides for the issue of proclamation of sale. The proclamation shall specify the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part. In the case on hand, there was no question of attachment of property since the property has already been offered as security . At the time of settling the proclamation of sale, the executing court was bound to ascertain whether the sale of a portion of the property would be sufficient to satisfy the decree debt as provided under Rule 66(2) (a) of Order XXI of the Code of Civil Procedure. The Supreme Court in ***Ambati Narasayya v. M. Subba Rao*** **(AIR 1990 SUPREME COURT 119)** has stated that the executing court is bound to consider whether it is necessary to sell the entire extent of land belonging to

the judgment debtor or whether it would be sufficient to sell only a portion of the property . In the words of the Supreme Court:

> *"It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property , the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just a discretion , but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction.* "

The decision of the Supreme Court in ***Ambati Narasayya v. M. Subba Rao***, was followed in several other decisions of the Supreme Court , including the the decision in ***Desh Bandhu Gupta vs N.L Anand & Rajinder Singh*** **[(1994) 1 Supreme Court Cases 131].** The court below has not complied with the mandatory requirements of Rule 66 of Order XXI of the Code

of Civil Procedure. Therefore, the order passed by the court below holding that the proclamation is settled , is set aside. The court below shall settle the proclamation afresh, after considering the objections raised by the judgment debtor and after affording an opportunity of being heard to the parties. The judgment debtor has suggested the value of the property in his objection. It is not necessary for the executing court to make an enquiry and fix the upset price . The only requirement under the second proviso to Rule 66 (2) of Order XXI of the Code of Civil Procedure is that the proclamation of sale shall include the estimate of value of the property given by either or both the parties. Since both the parties have suggested value of the property, it is sufficient if the executing court directs to incorporate in the sale proclamation the value as suggested by both the parties.

In the result, the order passed by the court below is set aside. The court below shall proceed with the execution petition in the manner indicated above. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 477 OF 2000

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Dated this the 28th November, 2007

O R D E R